

**DECISION NOTICE
and
FINDING OF NO SIGNIFICANT IMPACT**

FOREST PLAN AMENDMENT 01-05

**EAGLE, GARFIELD, GUNNISON, PITKIN, MESA, MOFFAT, RIO
BLANCO, ROUTT, SUMMIT COUNTIES, COLORADO**

**UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE
WHITE RIVER NATIONAL FOREST**

March 2005

Background

The environmental assessment (EA) proposes to amend the White River National Forest Land and Resource Management Plan – 2002 Revision (Forest Plan) to achieve compliance with 16 U.S.C. 1604(g)(3)(E)(ii), 36 CFR 219.27(c)(3), and sections of the *Consolidated Decision for Appeals of the White River National Forest Revised Land and Resource Management Plan* (09/15/2004), and the *Discretionary Review Decision on the Chief's Appeal Decision Regarding the White River National Forest Revised Land and Resource Management Plan* (12/2/2004). The review documents found that some of the standards and guidelines presented in the Forest Plan created an unnecessary layer of management direction. This Decision Notice responds to the findings for certain water, riparian and lynx standards and guidelines. The purpose of this initiative is to remove redundant direction and clarify direction in the Forest Plan to present a more comprehensive and integrated planning document.

Decision and Rationale

Based upon my review of all alternatives, I have decided to implement Alternative 3 which fully meets the purpose and need for this initiative. Alternative 3 also removes other redundant standards and guidelines covered by Forest Service Handbook (FSH) 2509.25 - Water Conservation Practices Handbook, Region 2 Amendment 3/22/99 (FSH 2509.25 Watershed Conservation Handbook). This creates an atmosphere of clarity when implementing the Forest Plan, FSH 2509.25 Watershed Conservation Practices Handbook, the Clean Water Act of 1977, and the State of Colorado and Forest Service Memorandum of Understanding (04-MU-11020000-029). All contain management direction to ensure quality water and riparian environments. By removing redundancy each can stand on their own and work in concert with one another, rather than possibly conflict with one another.

All action alternatives including Alternative 3 clarify two standards that were found in the reviews to be confusing as originally written. Forest-wide Canada Lynx Standard #1 called for broad scale assessments to be done on projects that had potential to affect lynx or their habitats in the first part of the standard and allowed for exception in the second part. Removing the first part which states “projects that have the potential to affect lynx or lynx habitat must include a broad scale assessment...” clarifies the true intent of this standard, that is where broad scale assessments haven’t been done “limit disturbance within each lynx analysis unit (LAU) as follows: if more than 30 percent of lynx habitat within an LAU is currently in unsuitable condition, no further reduction of suitable conditions shall occur as a result of vegetation management by federal agencies.” This does not remove the Forest Service’s obligation to perform broad scale assessments for lynx, rather it allows the Forest Service to do so in priority areas and use them appropriately. Indeed the Forest Plan still provides direction for the Forest Service to continue to develop broad scale assessments as documented in Forest goals, objectives and strategies within the plan.

The other standard requiring clarification under this action is Forest-wide Water and Riparian Resource Standard #1 addressing aquatic communities. The standard will now read “In each stream *currently* supporting a self-sustaining *fish population*, ensure that projects maintain sufficient habitat, including flow, for all life history stages of native and desired non-native species.” The intent of the standard was to prevent additional degradation in streams where

viable fish populations exist to date. As rewritten, the intent and direction provided by the standard is clear.

Public Involvement

As directed under 40 CFR 1503, this proposed amendment was provided to the public and other agencies for comment during scoping. A legal notice was posted in the Glenwood Springs Post Independent informing the public of their opportunity to comment on January 31, 2005. In addition, a Scoping Statement was also mailed directly to persons and organizations that may be interested or affected. This amendment also generated news briefs on local radio stations, and in local area and Denver newspapers. The scoping period ended on February 14, 2005.

The White River National Forest received 12 comment letters, from 23 different signatories. In order to be responsive to the comments, the interdisciplinary team developed a response to all comments.

Alternatives

Alternative 1: No Action Alternative - Under the No Action Alternative, the current Forest Plan as written would continue to guide management of the project area. No standards or guidelines would be removed from the Forest Plan. There would be no clarification of Water and Riparian Resource Standard #1.

Alternative 2 - The Proposed Action

This alternative was developed to address the particular contentions found in the Forest Plan and recommended solution to certain Forest-wide standards and guidelines for water and riparian areas, and lynx. This alternative creates an amendment that removes the following standards and guidelines from the Forest Plan:

- 1) Forest-wide Canada Lynx Standard #1. Projects that have the potential to affect lynx or lynx habitat must include a broad scale assessment that addresses the ecological conditions for the area (See strategies 1d.1 and 1d.2 for content to be addressed in the assessment) (USDA 2002a, p.2-19).
- 2) Forest-wide Water and Riparian Resources Standard #5. In the water influence zone next to perennial and intermittent streams, lakes, and wetlands, allow only those actions that maintain or improve long-term stream health and riparian ecosystem condition (USDA 2002a, p. 2-6).
- 3) Forest-wide Water and Riparian Resources Standard #6. Design and construct all stream crossings and other instream structures to provide for the passage of flow and sediment, withstand expected flood flows, and allow free movement of resident aquatic life (USDA 2002a, 2-6).
- 4) Forest-wide Water and Riparian Resources Standard #7. Conduct actions so that stream pattern, geometry, and habitats are maintained or improved towards robust stream health (USDA 2002a, 2-6).
- 5) Forest-wide Water and Riparian Resources Standard #8. Maintain long-term ground cover, soil structure, water budgets, and flow patterns of wetlands to sustain their ecological function per 404 regulations (USDA 2002a, 2-6).
- 6) Forest-wide Water and Riparian Resources Standard #9. Maintain sufficient stream flow under appropriate authorities to minimize damage to scenic and aesthetic values, fish, and wildlife, and to protect the environment (USDA 2002a, 2-6).

- 7) Forest-wide Water and Riparian Resources Guideline #4. File statements of opposition to water rights that injure or have the potential to injure national forest water rights or resources (USDA 2002a, p.2-7).
- 8) Water and Aquatic Resource Standards in Management Area 8.25 Ski Areas Standard #1. All new water right applications, for diversion and use on National Forest System lands for permitted purposes, shall be applied for in the name of the United States, or transferred to the United States immediately upon acquisition. These water rights shall be used for the permitted purposes of the life of the special use authorization unless otherwise agreed to by the United States and the authorized permittee (USDA 2002a, 3-83).
- 9) Water and Aquatic Resource Standards in Management Area 8.25 Ski Areas Standard #2. Snowmaking and other water depletions will be conducted in a manner that conserves the stream pattern, geometry, substrate composition, and aquatic habitat in affected perennial streams (USDA 2002a, 3-83).

Included in the amendment under Alternative 2 is the clarification of Forest-wide Water and Riparian Resources Standard #1 to read: “In each stream currently supporting a self-sustaining fish population, ensure that projects maintain sufficient habitat, including flow, for all life history stages of native and desired non-native species.”

Forest-wide Canada Lynx Standard #1 will read: In the absence of guidance developed from a broad scale assessment for an area, limit disturbance within each lynx analysis unit (LAU) as follows: If more than 30 percent of lynx habitat within an LAU is currently in unsuitable condition, no further reduction of suitable conditions shall occur as a result of vegetation management by federal agencies.

Alternative 3 – The Selected Alternative

This alternative is the Selected Alternative (see discussion above regarding the decision to implement Alternative 3). This alternative adopts the recommendations of Alternative 2 and applies the same principals to amend the Forest Plan, namely to remove additional redundant direction found in Forest Service Handbook 2509.25. This alternative builds on Alternative 2 and includes the additional removal of the following standards:

- 1) Forest-wide Water and Riparian Resources Standard #2. Manage land treatments to conserve site moisture and to protect long-term stream health from damage by increased runoff (USDA 2002a, p. 2-6).
- 2) Forest-wide Water and Riparian Resources Standard #3. Manage land treatments to maintain enough organic ground cover in each land unit to prevent harmful increased runoff (USDA 2002a, p. 2-6).
- 3) Forest-wide Water and Riparian Resources Standard #10. Manage water-use facilities to prevent gully erosion of slopes and to prevent sediment and bank damage to stream (USDA 2002a, p. 2-6).
- 4) Forest-wide Water and Riparian Resources Standard #11. Place new sources of chemical and pathogenic pollutants where such pollutants will not reach surface or ground water (USDA 2002a, p. 2-6).
- 5) Forest-wide Water and Riparian Resources Standard #12. Apply runoff controls to disconnect pollutant sources from surface and ground water (USDA 2002a, p. 2-7).
- 6) Forest-wide Water and Riparian Resources Standard #13. Apply chemicals using methods that minimize the risk of entry to surface and ground water (USDA 2002a, p. 2-7).

- 7) Forest-wide Soil Standard #1. Stabilize and maintain roads and other disturbed sites during and after construction to control erosion (USDA 2002a, p. 2-4).
- 8) Forest-wide Soil Standard #2. Limit roads and other disturbed sites to the minimum feasible number, width, and total length consistent with the purpose of specific operations, local topography, and climate (USDA 2002a, p. 2-4).
- 9) Forest-wide Soil Standard #3. Construct roads and other disturbed sites to minimize sediment discharge into streams, lakes, and wetlands (USDA 2002a, p. 2-4).
- 10) Forest-wide Soil Standard #4. Reclaim roads and other disturbed sites when use ends, as needed, to prevent resource damage (USDA 2002a, p. 2-4).
- 11) Forest-wide Soil Standard #6. Maintain or improve long-term levels of organic matter and nutrients on all lands (USDA 2002a, p. 2-5).

Finding of No Significant Environmental Impact

After thorough consideration of the EA, Appendices, and the comments received, I have determined that these actions will not significantly affect the quality of the human environment considering the context and intensity of impacts (40 CFR 1508.27). I have determined that these actions are not a major federal action, individually or cumulatively. The actions proposed in the Selected Alternative, Alternative 3, both short and long term, are not significant. Thus, an environmental impact statement is not necessary. I base my finding on the following:

1. Though effects may be both beneficial and adverse, a beneficial effect does not necessarily outweigh an adverse effect. When examining this proposal the benefits of the action are to provide clear non-redundant direction for water, riparian, and lynx management. The clarification of the aquatic standard in the Forest Plan helps to ensure the intent of that standard is met. No adverse effects were presented as all of the standards and guidelines proposed to be removed from the Forest Plan are provided in other direction, direction that has as much standing as the Forest Plan. The management of Forest Service lands for water, riparian, and lynx protection does not change by this action.
2. Public health and safety are not adversely affected by the proposed action.
3. There will be no significant effects on unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas. No ground disturbing activities are associated with this action therefore historic, cultural, or other land resources will not be affected. The EA found for water resources “the selection of either of the action alternatives will not change management direction on the Forest since redundant direction is included in FSH 2509.25” (EA page 27) and for ecologically critical areas such as lynx habitat “the selection of either action alternative will not create any environmental effects” (EA page 29).
4. The degree to which the effects on the quality of the human environment are not likely to be highly controversial. Based on the reviews of the Forest Plan and public comment, the selected alternatives seeks to solve controversy and clarify management of water, riparian, and lynx

resources by removing redundant standards and guidelines and clarifying others to ensure clear management direction.

5. The degree to which the possible effects on the environment are not likely to be highly uncertain or involve unique or unknown risks. Management of water, riparian and soil, and lynx habitat resources will not change under the Selected Alternative. "...[T]he relative authority behind either Forest Plan standards or Watershed Conservation Handbook standards is essentially equal. Implementation of any of the alternatives will not change management practices on the ground" (EA page 15). For Water and Riparian Resource Standard #1 "wording changes clarify the original intent of the standard; therefore this change does not constitute a change in management direction...(EA page 24). Lynx direction for broad scale assessments are provided for in the goals, objectives, and strategies in the Forest Plan. "Removal of the repetitive language concerning broad scale assessments in Forest-wide Canada Lynx Standard #1 does not affect the desire of the Forest to complete these assessments across the Forest" (EA page 29).

6. The action is not likely to establish precedent for future actions with significant effects or represents a decision in principle about a future consideration. Management direction for water quality and riparian areas are found in several well established laws and regulations. "Forest Service watershed conservation is based on six major laws that set a consistent land-and-water stewardship vision. Those are: the Organic Administration Act of 1897 (16 U.S.C. 475), Multiple Use-Sustained Yield Act of 1960 (16 U.S.C. 528), Endangered Species Act of 1973 (16 U.S.C. 1531-1536, 1538-1540), National Forest Management Act of 1976 (16 U.S.C. 1600-1602, 1604, 1606, 1608-1614), Federal Land Policy and Management Act of 1976 (43 U.S.C. 1752), and the Clean Water Act of 1977 (33 U.S.C. 1251, 1254, 1323, 1324, 1329, 1342, 1344)" (EA page 13-14). The regulatory guidance found in FSH 2509.25 Watershed Conservation Handbook is based on these laws. The Forest Plan adds further direction not covered by these laws and regulatory guides. The roles for all these laws, regulations, and planning documents are well established. The action does not change or try to redefine the process or the role of any management document. The action just removes any direction already found elsewhere and clarifies other direction where that action is not directly covered elsewhere.

7. The cumulative impacts are not significant, even when examining other related projects with insignificant impacts. "The action alternatives only seek to remove direction which is redundant and to clarify the original intent of Forest-wide Water and Riparian Resource Standard #1. Implementation of any of the alternatives, including the no-action, is not expected to produce consequences that differ from those which are being experienced under current management practices" (EA page 30). If FSH 2509.25 Watershed Conservation Handbook were to be revised the Forest Service would have to examine the changes to see if it creates a changed condition and how those changes may impact management direction on the Forest, regardless of which alternative is selected.

8. The action will have no significant adverse affects on districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources. No ground

disturbing activities are associated with this action therefore historic, cultural, or other land based resources such as facilities, will not be affected.

9. The action will not adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973. Lynx habitat is not compromised by this action. Direction to perform broad scale assessments are listed in the objectives and strategies for the Forest Plan. The application of a 30% unsuitable habitat threshold will be applied where broad scale assessments are not complete. The Biological Evaluation, Biological Assessment, and Biological Opinion, and MIS evaluation for the Forest Plan apply to the EA for the amendment proposal. A Biological Assessment and Biological Evaluation, and MIS assessment were completed for this EA and are on file with the administrative record. Informal consultation with the U.S. Fish and Wildlife Service concurred with the no effect for the amendment proposal.

10. The action will not violate Federal, State, or local law or requirements for the protection of the environment.

Findings Required by Other Laws and Regulations

This EA and Decision Notice follow the process as outlined in 36 CFR 217 to approve, amend, or revise a National Forest land and resource management plan. The decision to implement Alternative 3, the Selected Alternative, is consistent with the intent of Forest Plan long term goals, objectives, strategies, standards, and guidelines. The Selected Alternative also allows for clarity when implementing the Forest Plan, FSH 2509.25 Watershed Conservation Handbook, and the Clean Water Act of 1977.

Implementation Date

If no appeal is received, implementation of this decision may occur on, but not before, 7 calendar days following publication of the legal notice.

Administrative Review or Appeal Opportunities

This decision is subject to appeal pursuant to 36 CFR 217.3. The appeal must be filed (regular mail, fax, e-mail, hand delivered, or express delivery) with the Appeal Deciding Officer. Written comments must be submitted to:

USDA Forest Service, Region 2
Attn: Appeals Deciding Officer
P.O. Box 25127
Lakewood, Colorado 80225-25127
FAX: 303-275-5134
Email: appeals-rocky-mountain-regional-office@fs.fed.us

Appeals, including attachments, must be filed within 45 days from the publication date of this notice in the Glenwood Post Independent, the newspaper of record. The publication date in the newspaper of record, is the exclusive means for calculating the time to file an appeal. Those

wishing to appeal this decision should not rely upon dates or timeframe information provided by any other source.

The notice of appeal must meet the appeal content requirements as written in 36 CFR 217.9:

Content of a notice of appeal.

- (a) It is the responsibility of those who appeal a decision under this part to provide a Reviewing Officer sufficient narrative evidence and argument to show why the decision by the lower level officer should be changed or revised.
- (b) At a minimum, a written notice of appeal filed with the Reviewing Officer must
 - 1) State that the document is a Notice of Appeal filed pursuant to 36 CFR 217;
 - 2) List the name, address, and telephone number of the appellant;
 - 3) Identify the decision about which the requester objects;
 - 4) Identify the document in which the decision is contained by title and subject, date of the decision, and name and title of the Deciding Officer;
 - 5) Identify specifically that portion of the decision or decision document to which the requester objects;
 - 6) State the reasons for objecting, including issues of fact, law, regulation, or policy and if applicable, specifically how the decision violates law, regulation, or policy; and
 - 7) Identify the specific change(s) in the decision that the appellant seeks.

Responsible Official and Contact Person

Don Carroll, Acting Forest Supervisor for the White River National Forest, is the responsible official for the Forest Plan Amendment 01-05 Amendment EA.

For additional information concerning this decision, contact:

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Don Carroll

Date

Acting Forest Supervisor